IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.63 OF 2002 & 67 OF 2002

FIRST APPEAL NO.63 OF 2002

1. Special Land Acquisition Officer(South Goa)
Konkan Railway Corporation Limited,
Amey Guest House,Davorlim Road,
P.O. Navelim,Salcete Goa, 403 707

2.Chief Engineer,
Konkan Railway Corporation Ltd.,
Rawanfond,near Margao Railway Station,
Margao-Goa. .... Appellants.

V/s.

1. Elesbao Pereira
2. Maria Raynor Pereira
3. Madeline Pereira
4. Vinia Fernandes
5. Nelson Fernandes
6. Vilma Soares

all residents of 2 Happy Apartments
Vasco-da-Gama, Goa.

7. Josepha Soares(since deceased)
represented by his legal representatives.

7(a). Ms. Deviya J. Soares
7(b). Mr. Jitesh A.A. Soares
7(c). Mr. Dinesh C. Soares
7(d). Mr. Rohan J. Soares

All residents of 3 Shanti Niwas M.D.S. Marg,
Chembur, Mumbai 400071. .... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr.J. Godinho, Advocate for the respondent nos.3,4,5,6,7(a) to (d).

Mr. V.A. Lawande, Advocate for the respondent nos.1 & 2.

FIRST APPEAL NO.67 OF 2002

1. Mr. Nelson Fernandes,

2.Mrs. Vinia Fernandes,

Both residents of Orchid Enclave,
Dactolem, Vasco-da-Gama
Goa, 403802.

3.Mrs. Vilma Soares,

4.Mr. Joseph C Soares(since deceased)
represented through Lrs.
4(a). Ms. Deviya J. Soares
4(b). Mr. Jitesh A.A. Soares
4(c). Mr. Dinesh C. Soares
4(d). Mr. Rohan J. Soares
All resident of 3 Shanti Niwas,
M.D.S. Marg, Chembur,
Mumbai 400 071.

5.Mrs.Madeline Pereira

Appellant No.5 is represented by
constituted attorney Appellant No.1
(Registered Address) ..... Appellants.

V/s.

1. Special Land Acquisition Officer,
South Goa,KRCL,Amey Guest
House, Davorlim Road, PO

Navelim Salcete,Goa, 403 707.

2.The Chief Engineer,Konkan
Railway Corporation Ltd.,
4th floor Souza Towers,
Church Square, Panaji,
Goa, 403 001.

3.Shri Elesbao Pereira,

4.Mrs. Maria Raynor Pereira,
Both residing at,
Elray Building,
Mangor,Vasco-da-Gama .... Respondents.

Mr. J. Godinho, Advocate for the appellants.

Mr. E. Afonso, Advocate for the respondent nos. 1 & 2.

CORAM: A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE: 9th March, 2005.

ORAL JUDGMENT:(Per BRITTO,J.)

Dissatisfied with the award of compensation by judgment/Award dated 29.8.2001 of the learned Additional District Judge, Margao, both the parties have filed appeals against the same.

2. The parties hereto shall hereinafter be referred to in the names as they appear in the cause title of Land Acquisition Case No.391/95.

3. By Notification issued under Section 4(1) of the Land Acquisition Act, 1894(Act, for short), and published on Gazette dated 24.10.91 the Government acquired 7450 sq.metres of land of applicants of survey no.14/3 of village Cortalim in Mormugao Taluka for the construction of B.G. Line for Konkan Railway Corporation. In fact a total area of 277175 sq.metres was notified to be acquired in Cortalim village but later on it was reduced to 187917 sq.metres.

4. By Award dated 24.1.95 the Land Acquisition Officer awarded to the applicants compensation at the rate of Rs.4/- per sq.metre. This compensation was awarded for the subject land as land which was untenanted , bharad/coconut/cashew/mix garden land.

5. Dissatisfied with the said Award of the Land Acquisition Officer, the applicants got a reference made to the District Court and in the said reference and in support of their claim for enhancement the applicants produced three Sale Deeds and one Award. The Sale Deeds are:(1) Exh. Aw.1/E dated 23.4.1991 in respect of 325 sq.metres sold at the rate of Rs.200/- per sq.metre (ii) Exh.Aw.1/F dated 20.12.91 in respect of plot admeasuring 480 sq.metres sold at the rate of Rs.167/- per sq.metre and (iii) Exh.Aw.1/G dated 27.3.1992 in respect of 300 sq.metres sold at the rate of Rs.175/- per sq.metre . The applicants also relied upon an Award

Exh. Aw.1/H under Section 28-A of the Act dated 3.7.89. In fact this Award was passed based on an award of the learned District Judge probably in L.A.C No.224/81 dated 28.7.1988. By virtue of the said Award Exh.Aw.1/H dated 3.7.89 compensation was enhanced from R.4/- and Rs.5/- to R.20/- and Rs.30/- per sq.metre, respectively. However, for reasons best known to the applicants, the applicants chose not to produce the said Award of the learned Additional District Judge in L.A.C. No.224/81 dated 28.7.1988. The applicants also examined Aw.4 Maria Carvalho to prove the Sale Deed Exh.Aw.1/E dated 23.4.91 and Aw.3 Antonio Rodrigues to prove the Sale Deeds Exh.Aw.1/F and Exh.Aw.1/G dated 20.12.91 and 27.3.1992, respectively. The applicants also examined a valuer namely architect Ms.. Pratima Kumar who valued the subject land of the applicants at the rate of Rs.500/- per sq. metre.

6. The learned Additional District Judge regarding the enhanced claim for value of trees from Rs.82,282/- to Rs.1,81,450/- rightly rejected the same in the absence of any supporting evidence having been produced on behalf of the applicants. The learned Additional District Judge also rejected the opinion given by Aw.2 architect Pratima valuing the subject land at Rs.500/- per sq.metre. An opinion of an expert is as good or as bad as the reasons given in support of the same and since Aw.2 Pratima had given no reasons in support of her opinion nor used any known methods of

valuation, the same, in our view, was rightly rejected by the learned Additional District Judge.

7. However, the learned Additional District Judge by taking an average of the prices of the three Sale Deeds and after taking a deduction of 40% as development charges proceeded to fix the compensation payable to the applicants at the rate of Rs.108/- per sq.metre which is under challenge from both the respondents in the appeal filed by them. Although Aw.3 Antonio Rodrigues had stated that he had constructed a house in the plot purchased by him, he had further stated that there was no road leading to his plot and the same was at a distance of about 400 metres away from the main road. However, the very Sale Deed Exh.Aw.1/F dated 27.3.1992 showed that the plot of Aw.3 Rodrigues had a road on the Northern as well as Eastern side and therefore it is clear that Aw.3 Rodrigues came to depose before the Court only to assist the applicants to obtain enhanced compensation. Although there was ineffective cross-examination of Aw.3 Rodrigues, it was the duty of the learned Additional District Judge to have subjected his evidence to close scrutiny and assess the same in proper perspective. The approach of the learned Additional District Judge in taking an average of the prices of the three Sale Deeds is wholly erroneous. The Hon'ble Supreme Court in the case of **Bakhtawar Singh and another v. Union of India and another**((1995) 2 SCC 495) has stated that it has

repeatedly held that the application of the principle of average price is wrong and illegal. Therefore, in our view the learned Additional District Judge was not at all justified in taking an average of the prices of the said three Sale Deeds and after taking a deduction of 40% fix the compensation payable to the applicants. It is not known why the learned Additional District Judge chose not to fix compensation on the basis of the Award Exh.Aw.1/H dated 3.7.89. In case the applicants had produced the Award of the District Court dated 28.7.1988 on which the said Award under Section 28-A was based, it might have facilitated the learned Additional District Judge to have fixed the compensation payable to the applicants on the basis of the same. It is well known principle that if there is evidence of the market value commanded by the acquired land itself, there is no need to travel beyond the boundary of the acquired land. The need to take into consideration the value of the land adjacent to the acquired land or near-about the area which possess the same potentiality to work out the prices fetched therein for determination of the market value of the acquired land arises only when there is no evidence of the value of the acquired land and in cases where evidence of the value of the acquired land itself is available on record it is unnecessary to travel beyond that evidence and consider the market value prevailing to the adjacent lands. It also may be noted that the applicants had produced no evidence whatsoever as to the related location of the said three plots of the Sale Deeds namely whether they were located

at 2 to 2 ½ kms. away as stated by Aw.1 Nelson Fernandes in the direction of Vasco-da-Gama or, in the direction of Margao or for that mater in the direction of Quelossim. Prices might have varied depending upon the said location or directions.

8. At the time of hearing, Shri Godinho, the learned Counsel of the applicants has submitted that since the Award Exh.Aw.1/H dated 3.7.89 pertains to the very subject land, the same could be used as a guide to fix compensation in this case by awarding an increase of 10% to 15% over a period of 20 years which have lapsed since then. Shri Godinho has placed reliance on the cases of **Land Acquisition Officer v. L. Kamalamma** ((1998)2 SCC 385)**, Krishi Utpadan Mandi Samiti v. Bipin Kumar and another**((2004) 2 SCC 283), **Bhim Singh and others v. State of Haryana and others**((2003) 10 SCC 529) **and Delhi Development Authority v. Bali Ram Sharma and others**((2004) 6 SCC 533)**.** Shri Lawande, appearing on behalf of the proforma respondent nos.3 & 4 in First Appeal No.67/2002 who were also the applicants before the learned Additional District Judge, has placed reliance on a judgment of a learned single Judge of this Court dated 20.8.2004 in First Appeal No.82/1999 and submitted that since the judgment dated 20.8.2004 deals with the same land and the same Notification, the applicants be awarded compensation at least at the rate of Rs.76/- per sq.metre fixed therein, Shri Lawande has further referred to

the case of **Land Acquisition Officer & Mandal v. V Narasaiah** ((2001) 3 SCC 530) and submitted that the respondents also had a burden to discharge by leading evidence to show as to what was the compensation payable to the applicants.

9. On the other hand, Shri Afonso, the learned Counsel of the respondents has submitted that in the absence of any evidence having been led on behalf of the applicants as regards rise in price they would not be entitled to an increase of 10% per year. He further submits that after May 1983 or thereabout when the Zuari Bridge was commissioned the relative importance of Cortalim ferry junction and the land nearby including the subject land has lost its importance.

10. We are unable to accept the submission made on behalf of the learned Counsels in their entirety. The case of **V. Narasaiah**(supra) is not an authority in support of the proposition that the respondents have to lead evidence in a reference for enhancement of compensation under Section 18 of the Act. It is an authority for the proposition that by virtue of Section 51-A of the Act it is open to the Court, but the Court is under no compulsion, to treat certified copies of Sale deeds as evidence. The Hon'ble Supreme Court by a catena of decisions has held that the burden that the offer made by the Land Acquisition Officer is inadequate or that the Land

Acquisition Officer proceeded on a wrong premise is always on applicants who seek a reference for enhancement. In this context we may refer to the case of **Spl. Deputy Collector and another v. Kurra Sambasiva Rao and others (**AIR 1997 SC 2625) wherein the Hon'ble Supreme Court speaking through three learned Judges has held that the burden of proof that the amount awarded by the Land Acquisition Officer is not adequate is always on the claimant.

11. We have already taken note of the fact that the applicants did not produce the Award of the learned District Judge in Land Acquisition Case No.224/81 dated 28.7.1988 before the learned Additional District Judge . Similarly, the applicants also chose not to place a copy of the Award in Land Acquisition Case No.390/95 dated 29.1.1999 from which First Appeal No.82/99 was decided by the learned single Judge of this Court on 20.8.2004, in this case before the learned Additional District Judge. We are unable to agree that the subject land should be given compensation at the rate of Rs.76/- per sq.metre based on the Judgment dated 20.8.2004 of the learned Single Judge of this Court. Indeed the learned Additional District Judge in Land Acquisition Case No.390/95 by judgment dated 29.1.99 after taking the Award dated 28.7.88 in Land Acquisition Case No.224/81 and by giving an yearly increase of 10% had fixed compensation at the rate of Rs.76/- per sq.metre in respect of survey

no.14/8 of Cortalim village. The respondents (K.R.C. Ltd.) having filed an appeal before this Court namely First Appeal No.82/99 failed in the same as a result of which the Award of the learned Additional District Judge in Land Acquisition Case No.390/95 dated 29.1.99 was maintained and thereby the compensation payable at the rate of Rs.76/- per sq.metre was confirmed. However, we find from the judgment dated 20.8.2004 in First Appeal No.82/99 that the land of survey no.14/8 though covered by the same notification as in the present case, unlike the subject land, was plain and level land. It is quite probable that survey no.14/8 and 14/3(subject land) originally formed part of the same property. It was suggested by the respondents to Aw.1 that the subject land was having a height of about 30 metres from the road level, a suggestion which Aw.1 Nelson denied. However Aw.1 Nelson was falsified by his own witnesses namely Aw.3 Rodrigues and Aw.4 Carvalho. A conjoint reading of the evidence of the aforesaid two witnesses clearly shows that the subject land of the applicants was hilly and was having different levels in height ranging from 1 metre to 30 metres from the road level and therefore we are of the view that the price fetched for land of survey no.14/8 in the said Land Acquisition Case No.390/95(First Appeal No.82/99) cannot be given to the subject land. The land of survey no.14/3 was also the subject of acquisition in Land Acquisition Case No.58/96 and First Appeal No.66/2002 arisen therefrom was decided by us on 1.3.2005. There was evidence in Land Acquisition

Case No.58/96 given by different witnesses from those which were examined by the applicants in Land Acquisition Case No.391/95 that the applicants' land of survey no.14/3 was hilly having a height at some places to the extent of 30 metres from the road level. In the case of **Delhi Development Authority v. Bali Ram Sharma and others**(supra) the Hon'ble Supreme Court awarded compensation by escalating the amount at 5% and 10% over the amount given in **Karan Singh's case**((1997(8) SCC 186) because the Hon'ble Supreme Court found that the land acquired subsequently by Notifications dated 25.2.81 and 24.11.81 was not only in the same village but also it was similar to the land acquired in the said case of **Karan Singh**(supra). In the case of **Bhim Singh and others v. State of Haryana**(supra) the Supreme Court held that when compensation is fixed by the High Court in earlier proceedings and when in such proceedings the Supreme Court had proved the rate fixed then the best method would be to look at the earlier judgments and awards. In our view , since this Court has fixed compensation payable to the applicants in First Appeal No.66/2002 at the rate of Rs.38/- per sq.metre in respect of Notification published on Gazette dated 5.8.94, in respect of survey no.14/3 compensation payable to the applicants could be fixed on the basis of the said judgment of this Court dated 1.3.2005. We therefore deem it appropriate to deduct 10% per year and thus deduct Rs.11/- from Rs.38/- and fix the compensation payable to the applicants in respect of subject

land at Rs.27/- per sq.metre. Consequently Appeal No.63/02 is partly allowed and Appeal No.67/2002 is dismissed. The applicants would be entitled to consequential statutory benefits. The sum of Rs.68,810/- awarded by the Land Acquisition Officer towards the value of trees to be adjusted towards the compensation payable as assessed herein. No costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.